

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

PAUL PIZZUTO

Plaintiff,

Civil Action No. 04-12492 GAO

vs.

**AIRBORNE EXPRESS, INC., STEVEN
CROSSKEN, JOSEPH HAMILTON,
GREG SWEATT, AND ARTHUR
LEVERIS,**

Defendants.

**AFFIDAVIT OF DEFENDANT JOSEPH HAMILTON
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

I, Joseph Hamilton, hereby depose and state as follows:

1. I am a defendant in the above-captioned action.
2. During relevant times, I worked for defendant Airborne Express, Inc., and served as District Field Service Manager for its Stoneham, Massachusetts facility. I was in charge of the Stoneham facility, and my responsibilities included ensuring the safety of the employees within that facility.
3. The plaintiff, Paul Pizzuto, was a driver for Airborne at the Stoneham facility.
4. Beginning in July 2003, I began receiving reports from other Airborne employees of troubling and threatening statements and behavior by Mr. Pizzuto. On July 16, 2003, I received a report from Michael Trudeau, a supervisor at the Stoneham facility, that Mr. Pizzuto had become "irate" with him, began "yelling vulgar language," and

threatening “get the guys” who “did it.” A true copy of this report is attached hereto as Exhibit 1.

5. Also on July 16, 2003, I received a report from another supervisor, Christopher Demmons, stating that Mr. Pizzuto threatened that “He’d fix me...he’d get me” and that Mr. Pizzuto had become a “serious[] liability to the company and a major disruptive force in the workplace.” A true copy of this report is attached hereto as Exhibit 2.

6. Also on July 16, 2003, I received a report from Bill McClellan stating that Mr. Pizzuto said that “someone was trying to F**** around with him,” and that when he found out who it was “there was going to be trouble.” A true copy of this report is attached hereto as Exhibit 3.

7. Also on July 16, 2003, I received a report from defendant Arthur Leveris stating that Mr. Pizzuto “was out of control, using vulgar language and making threatening statements” and characterized Mr. Pizzuto as “dangerous to all employees working at [Airborne’s Stoneham facility]...” A true copy of this report is attached hereto as Exhibit 4.

8. The following week, on July 23, 2003, I received another report from Arthur Leveris describing behavior by Mr. Pizzuto that he had witnessed. The report stated that during a video presentation, Mr. Pizzuto was drawing attention to himself and “staring at [me] with such a look as if he wanted to fight [me].” A true copy of this report is attached hereto as Exhibit 5.

9. On July 24, 2003, I received a report from Timothy Carter stating that Mr. Pizzuto had threatened “you guys are going to get it,” “someone is going to get you guys,” or words to that effect. A true copy of this report is attached hereto as Exhibit 6.

10. On July 24, 2003, I received a report from defendant Greg Sweatt stating that Mr. Pizzuto threatened “you guys are going to get it” and “all you guys are going to get it.” A true copy of this report is attached hereto as Exhibit 7.

11. Michael Trudeau informed me that on July 24, 2003, Mr. Pizzuto threatened that “you guys are going down big time,” “do you have a family Mike?” “Have you ever seen someone die?” “I am not afraid of anyone or anything.” “They can shoot me now with one bullet.” “I am not afraid to die.” Mr. Trudeau later made a report in writing to me. A true copy of this report is attached hereto as Exhibit 8.

12. I tried to discuss these incidents with Mr. Pizzuto before he left work on July 24th, but Pizzuto refused. I made plans to speak with Mr. Pizzuto the next morning.

13. On the morning of July 25, 2003, before I could speak with Mr. Pizzuto, Mr. Leveris and Mr. Sweatt each approached me and gave reports of an incident they said they had witnessed earlier in the morning. Mr. Leveris and Mr. Sweatt both reported to me that Mr. Pizzuto drove his car into the building at a high rate of speed and jumped out of his car. Mr. Sweatt informed me that he “first thought that [Mr. Pizzuto] was planning on jumping out of his car and start shooting” and that he “quickly moved out of the way and looked for some type of cover.” Mr. Leveris informed me that he “immediately looked for an escape route b/c of [Mr. Pizzuto’s] recent actions and gestures toward NSH management.” Mr. Sweatt and Mr. Leveris each wrote written reports to me concerning

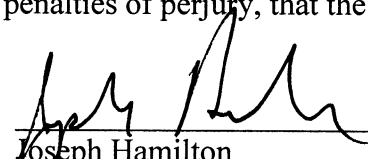
this incident, which repeated and confirmed the statements they made to me earlier in the morning. A true copy of these reports are attached hereto as Exhibit 9 and 10.

14. Based on the reports of threatening statements and behavior, I terminated Mr. Pizzuto. I alone made the decision to terminate Mr. Pizzuto. In terminating Mr. Pizzuto, I considered the information and numerous reports that he received over the preceding ten day period from Trudeau, Demmons, McClellan, Sweatt, Leveris, Carter. I considered whether the information and reports from these men were credible, and determined that it was. I also considered Airborne's policies against workplace violence and the need for him to provide a safe workplace for his employees. A true copy of Airbornes' workplace violence policy is attached hereto as Exhibit 11.

15. I terminated Mr. Pizzuto because of the reports of his threatening behavior and the fear that these threats would escalate into physical violence in the workplace. As the District Field Service Manager for the Stoneham, Massachusetts facility, I had the ultimate authority within that district to terminate Mr. Pizzuto.

16. Defendant Steven Crossken was the District Field Services Manager at the Stoneham facility before I replaced him in March 2003. On or about March 10, 2003, Mr. Crossken took a position at an Airborne Express facility in Hackensack, New Jersey. Mr. Crossken had no involvement in the termination of Mr. Pizzuto's employment, which occurred on July 25, 2003.

I hereby affirm, under the pains and penalties of perjury, that the foregoing is true.



Joseph Hamilton
Date: 10-5-07



From: MICHAEL.TRUDEAU
To: JOE.HAMILTON, ARTHUR.LEVERIS, *
Sent: Wednesday, 16 July 2003 7:59am PT
Subject: DRIVER INCIDENT

ON MONDAY 7/14, PAUL PIZUTTO BEGAN THE CHECKIN PROCESS WITH ME AT APPROXIMATELY 1700-1730. AFTER HE LOADED ALL OF HIS REFUSED POST OFFICE PACKAGES INTO A CAN THE PU&D MACRO WAS RUN FOR HIS ROUTE, 329. PAUL BEGAN ASKING FOR PRINTOUTS OF SEVERAL VERSIONS OF HIS POST OFFICE SPECIAL CUSTOMER P34 TO VERIFY PIECE COUNT. WHEN I REFERRED TO ORION I NOTICED THAT 10 POSTAL AWBS WERE SCANNED UNDER CODE ' 34 '. PAUL BECAME IRATE AFTER WE TRIED TO DISCUSS WHAT THE PROBLEM WAS WITH HIS POST OFFICE PACKAGE COUNT. HE CLAIMED 'SOMEONE DID THIS TO HIM' AND I KNEW WHO IT WAS. I SAID I DID NOT AND ASKED WHY HE THOUGHT SOMEONE MIGHT MIS-SCAN HIS FREIGHT AND HE BECAME MORE IRATE. HE BEGAN USING VULGAR LANGUAGE AND STATED HE WOULD GET THE GUYS ("EVERY ONE OF YOU") WHO DID IT. WHEN I ASKED WHO HE THOUGHT DID SOMETHING TO HIM HE RESPONDED 'THE BALD GUY WITH GLASSES'. AS HE WAS LEAVING THE BUILDING HE THREW A PLASTIC BOTTLE AT THE TRASH YELLING VULGAR LANGUAGE.



From: CHRISTOPHER.DEMMONS
To: JOE.HAMILTON
Sent: Wednesday, 16 July 2003 11:57am PT
Subject: pizzutto

Pizzutto has worked for me for 14 months. During that tenure, he has been out on Workman's Compensation for 7 months due to various physical and mental health issues. After returning to work in February after a 5 month absense, his performance and behavior went from marginal to unacceptable. Pizzutto harbors unfounded dellusions that management is conspiring against him at everyturn. He claims he is being followed daily and that some unknown entity is stealing freight from his truck. Yesterday, he was unable to properly scan his DDU freight. Instead of rescanning his freight and exiting the building, he spent an hour counting and recounting the freight. During this whole episode, he blamed management for the error. We had somehow sabotaged the system. All the while he kept telling me that "He'd fix me...he'd get me". Although he has rambled on like this before, a threat is a threat, innocuous or otherwise. I have treated Pizzutto fairly and respectfully over the course of the last year. I have taken every opportunity to set him up for success. In my opinion, he needs professional help. Given his current state of mind, he is a seriously liability to the company and a major disruptive force in the workplace.



From: BILL.MCLELLAN@AIRBORNE
To: JOE.HAMILTON
Sent: Wednesday, 16 July 2003 1:35pm PT
Subject: Paul Pizutto

Monday July 14th. Paul called and asked me to pull up his Post Office manifest. I did. There were 19 Pcs on it. He told me to to check 34 (instead of P34) I did, and there were an additional 10 Pcs. under "34" Paul asked "How do you suppose theat happened?" I offered the explanation that he forgot to add the "P" before 34. Paul responded with a "yeah..right" Paul added that someone was F**** around with him, and he was going to find out who it was. He finished by saying "tell the boys, nice try at 5 New England Buisness Center" I had no ideawhat he was talking about.

Paul called back and told me to print and fax the manifest for P34 and 34 to him at the post office. Again he displayed an attitude of paranoia, insisting that we were trying to frame him, or set him up. He said when he found out who it was. there was going to be trouble. Paul asked me again, how he could have had 10 pcs. under "34" When he insisted he scanned all the P.O. under P34. Again, I said: "Paul...You missed the P. Thats all" "I dont think so.." he added. Again Paul went on how he was going to catch the person that was doing this.

Bill McLellan



From: ARTHUR.LEVERIS
To: *, JOE.HAMILTON
Sent: Wednesday, 16 July 2003 11:03am PT
Subject: PIZZUTTO

On 7/14/03, Supervisor Mike Trudeau called me on my cell phone at approximately 1800 with a problem. Mike stated that Paul Pizzutto had a refused post office because the count was off, he also mentioned something about a code 34. Anyway, Mike Trudeau told me that Paul Pizzutto is very paranoid, and thinks that someone is out to get him and "they will pay for it tomorrow." Mike informed me to watch out for him the next day because he was out of control, using vulgar language and making threatening statements. This is a person that is dangerous to all employees working at NSH, not just the NSH management team.

On 7/16/03, Joe Hamilton and I met with Mike Rae, Jim Obrien and Paul Pizzutto because of probable suspicion. Joe Hamilton read Paul the ABX card stating that we are not doctors but we have been observing you acting in a different manner....etc.....etc.... Paul stated that he wanted the union present, he wanted Lou to be involved. Mike and Jim calmed him down while Paul started dialing different numbers on his cell phone. Pizzutto was on the phone for a good 15 minutes reading the contract and not adhering to our order for the test. Pizzutto could also be written up for insubordination because he did not follow Joe Hamilton's instruction to either take the drug and alcohol test immediately or be terminated. Instead, Pizzutto kept on talking on his cell phone reading the contract to the other party on the line. When Pizzutto finally got off the phone, he said he was going on FML and not taking the test. Mike Rae and Jim Obrien informed him he must take the test.

On 7/16/03, while at Occupational Health Clinic in Stoneham, Paul Pizzutto was acting like a young child wanting everyone's attention. He drank approx 25 cups of water in a row, burping and acting very inappropriately. He told Joe and I numerous times that "you will get yours," "I can go to bed at night without worrying." While all this was taking place, there were up to 5 patients observing his actions in his Airborne Express uniform. His actions are definately impressions I hope the patients do not have of Airborne Express, our drivers, and management team.

Arthur Leveris
Cartage Manager-NSH



From: ARTHUR.LEVERIS
To: JOE.HAMILTON, *
Sent: Wednesday, 23 July 2003 6:25am PT
Subject: PIZZUTTO

On 7/23/03 at approximately 0710, NSH station management showed the AM workforce the Chairman's video on the DHL/ABX merger. While the video was playing, I was looking around to see which drivers were paying attention and which drivers were horsing around. I noticed Paul Pizzutto drinking water out of a bottle with a nozzle on top. He was holding the bottle approximately 2 feet from his mouth squirting the water in his mouth, obviously trying to get attention from his co-workers. After observing these actions, I noticed him stare down Joe Hamilton for a good 2-3 minutes. Paul was staring at Joe with such a look as if he wanted to fight Joe. All the time I was observing this, I noticed Joe looking away and not paying any attention to Paul Pizzutto. This type of behavior is unacceptable in any work environment and should not be tolerated at any level.

Arthur Leveris
Cartage Manager-NSH



From: TIMOTHY.CARTER
To: JOE.HAMILTON
Cc: ARTHUR.LEVERIS
Sent: Thursday, 24 July 2003 12:51pm PT
Subject: Paul Pizzuto comment 24 July 03

Joe,

Following the a.m.sort, Greg Sweatt and I were standing near the exit door when Paul Pizzuto drove up, stopped, and while he was waiting for the overhead door to open completely made comments " you guys are gonna get it", "someone is gonna get you guys" or words to that effect. He was looking at Greg and me when he said it.

Tim Carter
781.279.2255
FSS-NSH



From: GREG.SWEATT
To: JOE.HAMILTON, GREG.SWEATT
Sent: Thursday, 24 July 2003 5:57am PT
Subject: pizzuto

I was standing at the middle garage door with supervisor tim carter and paul pizzuto asked me to open the garage door wider. so i went over and opened up the door. when he said "you guys are going to get it". I walked past him and he said "you are going to get it". i stopped and walked back and asked him who was going to get it because i thought he was singling me out. and he repeated."all you guys are going to get it".



From: MICHAEL.TRUDEAU
To: JOE.HAMILTON, ARTHUR.LEVERIS, *
Sent: Friday, 25 July 2003 9:38am PT
Subject: Driver Incident 7/24/03

On thursday 7/24/03 I was instructed to do a full truck load audit on Paul Pizutto due to the comments Paul had made earlier in the week. He felt someone was tampering with his parcels. Greg Sweatt had audit scanned his parcels on 7/23/03. As I began audit scanning his parcels Paul immediately positioned himself behind me to watch me scan each piece. I asked him how long it took Greg Sweatt to scan his whole truck and he said 'just do your job, I dont want to talk' Paul then began to comment in the following way the entire time I scanned his parcels.
"you guys are going down big time"
'They have video on all of you' 'The FEDs are on it now'
This will be bigger than Cashman. Do you have a family Mike? Well your kids will have to get used to visiting you in jail. I am going for \$30 million. Have you ever seen someone die mike? I have. I saw someone put a rope around their neck and jump of a chair. I am not afraid of anything or anyone. They can shoot me now with 1 bullet. I am not afraid to die.

As I finished scanning Paul asked me to sign his 425 book. When I noticed his supervisor had already signed it, I refused. He asked louder as I walked away.



From: GREG.SWEATT
To: JOE.HAMILTON, GREG.SWEATT
Sent: Friday, 25 July 2003 9:09am PT
Subject: pizzuto

This morning about 0700 I was walking on the dock from the time clock to the belt. As I passed the dock door I heard a car come around the corner of the building I noticed that it was paul pizzuto's red vw and he came racing up the ramp and into the building. I first thought he was planning on jumping out of his car and start shooting so I moved quickly out of the way and looked for some type of cover. He jumped out of his car and went over to the time clock to scan in and returned to his car and quickly backed out.



From: ARTHUR.LEVERIS
To: JOE.HAMILTON, *
Sent: Friday, 25 July 2003 12:07pm PT
Subject: PIZZUTO

On 7/25/03, at approximately 0655, Paul Pizzuto pulled onto the NSH dock in his POV, jumped out of his car and went to the time clock to punch in. When I saw him drive on the dock, I immediately looked for an escape route b/c of his recent actions and gestures towards NSH management. After I saw him jump back in his vehicle and speed out of the NSH station recklessly in reverse, I was still worried about the overall safety of the station with Paul working here. I informed Joe Hamilton at around 0710 what occurred with Paul earlier in the morning.

At approximately 0715, Jerry Halloran (Local 25 Steward), Paul Pizzuto, Joe Hamilton, and myself met in the NSH conference room to discuss his actions with a plan to help him. The first question Joe Hamilton asked

Paul was "Can we help you?" Paul answered, "If you have a discipline letter to issue me give it to me now." Joe answered, "Paul, can we help you....yes or no?" Paul again answered "Give me the discipline letters now."

Joe informed Paul that there is an overall concern for the safety of the building and employees and that the discipline letters were not his main concern at the moment.

Next topic discussed was Paul's payroll problem that should have been resolved on 7/24/03 but Paul stormed out of the building before we could talk to him and give him his check. Present on 7/24/03 was Chief Local 25

Steward Joe Quigley and NSH Steward Jerry Halloran. Both Stewards were at NSH after hours (1715) to talk to Paul to see if they could help him or get him some help through the local union. Again, Paul made some irate and irrational statements to Halloran and stormed out of the building. During the payroll discussion 7/25/03, Paul yelled at

Jerry Halloran and said to him, "Maybe you need to see a doctor," Halloran replied, "I do see a doctor." The entire payroll discussion was heated and Paul admitted that he has medical problems.

At approximately 0731 Joe issued Paul his warning letter from 7/24/03 regarding threats and threatening gestures and his termination letter for just cause from 7/25/03, speeding onto the dock and peeling out in reverse. Paul went off again stating he was taking us to court, he is "going to win the big dance." Jerry Halloran signed the letters for Local 25 and Paul refused to sign them but insisted he get a copy. Paul also stated he was going out on FML due to stress and anxiety relating to the disciplinary actions he received. He also stated he was filing for both FML and Worker's Compensation.

Paul was escorted to our Airborne Express vehicle to get his personal belongings and also escorted off of our premises by Joe Hamilton, Jerry Halloran, and myself.

During the meeting, Joe brought up the fact that we were not doctors, but we do believe Paul needs help. I think this is an important statement to add to this letter.

Respectfully,

Arthur Leveris
Cartage Manager-NSH

Workplace Violence



Introduction

Airborne Express is committed to providing a safe environment for our employees and customers. The Company believes that every employee has the right to a workplace free from violence and will not tolerate acts or threats of violence by or against employees, or members of the public either on Airborne property, or while conducting company business at other locations.

Policy

Workplace violence includes, but is not limited to, the following:

- A physical assault on another person.
- Actions and/or statements that a reasonable person would perceive as threatening and/or menacing.
- Behavior that a reasonable person could interpret as having the potential for physical harm to oneself or others.
- The carrying or display of weapons; comments or actions that would lead a reasonable person to conclude another party is in possession of a weapon; the destruction of property; or a communicated or reasonably perceived threat to destroy property.

Any employee who witnesses behavior or believes he or she is the target of violence or threats of violence, is required to immediately bring the incident to the attention of management or Human Resources. After a proper investigation, any employee found to have violated these guidelines will be subject to discipline, up to and including termination.

Issuing Authority for this Chapter: VP, Human Resources